

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

C.A. No. 05-11045-GAO

MICHAEL BAEZ,
Plaintiff

v.

MICHAEL MALONEY, et al.,
Defendants

DEFENDANTS' MOTION TO CLARIFY SCHEDULING ORDER. AND IF
NECESSARY, TO ENLARGE DISCOVERY PERIOD

The defendants Joseph Rackett, David Bolduc, Edward Ficco, Brian McManus, Robert Lashua, David Shaw, Charles Hooper, Edmund Preston, John Flowers, and Michael Cravedi, in the above-captioned action, move the Court for clarification of its scheduling order regarding paper discovery, and if necessary, pursuant to Fed. R. Civ. P. 6(b) to enlarge the time for them to complete discovery, to and including April 30, 2007.¹

As grounds, the ten defendants state that this action was filed by a pro se state prisoner incarcerated in the Commonwealth of Massachusetts Department of Correction's DDU at MCI-Cedar Junction, and he is proceeding in forma pauperis. At the Court's initial scheduling conference, the Court ordered that the parties should proceed with paper discovery, and that once completed, it would consider whether to permit depositions of the plaintiff and defendants. Thereafter, the Court denied plaintiff's motion for reconsideration, and ordered that fact discovery should be completed by September 30, 2006. It is unclear from the Court's order whether depositions were also to be

¹ Undersigned counsel does not represent Michael Maloney or Eugene Marsolais, who no longer work for the Department of Correction, and who have not been served with summonses and a copy of the complaint.

completed by the end of September. The plaintiff has not conducted any depositions. Undersigned counsel was unable to petition the Court for leave to depose the incarcerated plaintiff, and to depose the plaintiff, before September 30, 2006. In the middle of paper discovery in this case, she had to take a six-week leave of absence for medical reasons from the end of July until the first week of September 2006, and was unable to work during this period of time. She now has two appellate briefs to complete, one due in the First Circuit Court of Appeals on or about November 19, 2006, and is awaiting service of the plaintiff/appellant's brief which was due on or about October 19, 2006, in Clay v. Morrison, No. 05-2828. Additional time is needed to complete an investigation into the records of any investigation into the prison use of force, discover the medical records of the plaintiff, and to complete depositions. Because of the extraordinary number of inmate suits filed against the Department of Correction, totaling about one hundred new complaints per month, for a total of 3,900 presently pending cases, no other attorney has been able, and none will be available, to assist defense counsel.

The plaintiff will not be prejudiced by the enlargement of time.

WHEREFOR, the defendants request that the Court clarify the scheduling order that only paper discovery is required to be completed before September 30, 2006, or, if depositions are included in the order, that defendants be given additional time to April 30, 2007, to complete discovery.

Respectfully submitted,

The defendants,
By their attorneys,

Dated: September 22, 2006

NANCY ANKERS WHITE
Special Assistant Attorney General

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CERTIFICATE OF SERVICE

I, Margaret Melville, certify that on this day, I have served the plaintiff *pro se* in the above-entitled action with a true and accurate copy of the foregoing at his address of record, by First Class Mail, postage prepaid.

September 22, 2006

/s/ Margaret Melville
Margaret Melville